

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL DUANE SMITH,

Plaintiff,

Case No. 05-70467

v.

District Judge Arthur J. Tarnow
Magistrate Judge R. Steven Whalen

CITY OF MOUNT CLEMENS,
a Municipal Corporation, MT. CLEMENS
POLICE DEPARTMENT, et al, OFFICER
STEVEN ANDREWS in his individual
and official capacity,

Defendants.

REPORT AND RECOMMENDATION

Before the Court is Plaintiff's Motion for Default Judgment [Docket #12] against Defendants Mt. Clemens Police Dept. and Steven Andrews. As this is a dispositive motion, a Report and Recommendation is required under 28 U.S.C. §636(b)(1)(B).

Although the Plaintiff alleges that the Defendants have not answered the complaint, the record shows otherwise. The Defendants in fact filed an Answer, with Affirmative Defenses, on May 6, 2005 [Docket #9], and an Amended Answer on May 18, 2005 [Docket #14]. On February 6, 2006, the Court adopted the undersigned's Report and Recommendation dismissing the Mt. Clemens Police Dept. as a Defendant, and substituting the City of Mt. Clemens as the real party in interest [Docket #37]. On that

same day, Defendant City of Mt. Clemens filed an Answer with Affirmative Defenses [Docket #38]. The Defendants are not in default.

Therefore, I recommend that Plaintiff's Motion for Default Judgment [Docket #12] be DENIED.

Any objections to this Report and Recommendation must be filed within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. §636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sullivan*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

s/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: February 10, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on February 10, 2006.

s/Susan Jefferson
Case Manager